

IRA ROLLOVER GIFTS

During 2009 there is a special provision for people aged 70 1/2 and over to donate directly from an IRA without incurring normal tax consequences.

As originally enacted in the Pension Protection Act of 2006 (Pub. Law 109-280) on August 17, 2006, and extended by the Emergency Economic Stabilization Act of 2008 on October 3, 2008, taxpayers age 70½ and older are permitted to make tax-free “qualified charitable distributions” totaling up to \$100,000 per year from traditional Individual Retirement Accounts (IRAs) or Roth IRAs. **What are the particulars?**

- **Effective Dates:** All contributions must be made between January 1, 2008 and December 31, 2009.
- **Donor Age Requirements:** The donor/IRA owner must be 70½ years old or older when the contribution is made.
- **Contribution Limit:** A donor’s total combined IRA rollover contributions to charitable organizations cannot exceed \$100,000.00 per year
- **Eligible Recipient Charities:** In order for your donors to qualify for the tax-free treatment of this incentive, IRA rollover contributions may only be made to public charities. Contributions to supporting organizations, donor-advised funds, and private foundations, except in narrow circumstances, do not qualify for the enhanced deduction. Before accepting any donations from an IRA, charities should determine whether they are eligible. The determination letter your organization received from the Internal Revenue Service upon receipt of its tax-exempt status indicates whether it is a supporting organization under Section 509(a)(3) of the Internal Revenue Code.
- **Eligible Retirement Accounts:** Contributions can only be made from traditional Individual Retirement Accounts or Roth IRAs. Distributions from 403(b) plans, 401(k) plans, pension plans, and other retirement plans are ineligible for the tax-free treatment.
- **Written Receipt:** In order for your donors to make a qualified IRA contribution, the recipient charity must provide written acknowledgement of each contribution. The receipt should indicate:
 1. The gift amount;
 2. That your organization is a public charity qualified under section 170(b)(1)(A) of the Internal Revenue Code (again, refer to your organization’s IRS determination letter for verification);
 3. That the gift will not be distributed to a donor-advised fund or supporting organization; and,
 4. That no goods or services were received by the donor in exchange for the contribution.
- **Contributions directly from IRA to the charity:** Contributions must be made directly from the IRA to your charitable organization. If made by check from the IRA, it must be made payable to your charity. The check may reference the name of the donor to provide information to your organization about the source of the gift. You may want to advise your donors to ask their IRA administrators to include their name and contact information with the check that is sent to your organization.
- **Donors cannot receive any benefits for contribution:** A donor cannot receive any goods or services in return for the contribution in order to qualify for the tax-free treatment this incentive provides. Tax-free IRA rollover contributions cannot be used for auctions, raffle tickets, fundraising dinners, or any other type of quid-pro-quo transactions.

Who benefits

- **Taxpayers who don't itemize their deductions.** The IRA rollover most benefits the nearly two-thirds of Americans who do not itemize deductions on their annual income tax returns and therefore do not receive a tax benefit for their charitable contributions. Non-itemizers include lower- and middle-income taxpayers, as well as an estimated 5.2 million higher-income individuals.
- **Donors who've reached the 50 percent charitable giving limit.** Donors who itemize their deductions are prohibited from deducting more than 50 percent of their annual gross income for the purpose of making contributions to public charities. However, donations from an IRA are excluded from the percentage limit. Charities should encourage IRA rollover donations from individuals who have reached the 50 percent threshold but still want to give more.
- **Taxpayers whose tax deductions decrease as their income increases.** Several federal tax deductions – dependent and personal exemption deductions and deductions for medical expenses and non-business casualty losses, for instance – become smaller as a taxpayer's income increases. By making charitable donations from an IRA, rather than making regular, required distributions that qualify as income, taxpayers keep their annual income down and qualify for other tax deductions.
- **Taxpayers who live in states that do not permit tax deductions for charitable donations.** Indiana, Michigan, New Jersey, Ohio, Massachusetts, and West Virginia do not allow itemized tax deductions, and taxpayers are required to pay state income tax on all charitable donations. By making a charitable donation through an IRA, taxpayers exclude the amount from their state income and, consequently, from state taxes.
- **Charitable organizations.** Above all, charities should expect to receive increased donations as a result of the new IRA rollover and should proactively alert donors to the new incentive.

What happens if a donor distributes more than \$100,000 from his IRA to a charity?

Charitable contributions from an IRA totaling more than \$100,000 will not be eligible for the tax-free treatment of this incentive and will be counted as part of a taxpayer's annual gross income.

This information is intended to provide general guidance and is not a substitute for professional counsel.

Consult your tax or legal advisor for professional guidance.